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May 16, 1996

via Hand Delivery

EX PARTE OR LATE FILED

Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

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**Re: *Ex Parte* Supplemental Comments
CMRS Interconnection and Resale Obligations
CC Docket No. 94-54**

Dear Ms. Allen:

The American Mobile Telecommunications Association, Inc. ("AMTA", the "Association") submits these supplemental comments in the above-referenced docket, pursuant to Section 1.1206(a)(1) of the Federal Communications Commission's ("FCC", the "Commission") Rules and Regulations, 47 C.F.R. § 1.1206(a)(1). AMTA submits these *ex parte* comments to renew its opposition to a mandatory resale obligation for all CMRS providers, and, in particular, to oppose mandatory resale obligations for the specialized mobile radio ("SMR") service, in light of events that have occurred since the comment period in this docket.

The Association is aware that congressional deliberations prior to passage of the recently-enacted Telecommunications Act of 1996 (the "Act") included discussion of issues under consideration in the above-referenced proceeding. Due to the possibility that the Act might include language on these issues, the Commission prudently delayed its own decision in the docket. However, while the Act did resolve the issue of equal access for commercial mobile service ("CMRS") providers, it left other matters, including resale obligations, to the discretion of the FCC. It is the Association's understanding that the Bureau is nearing completion on its recommendation to the Commission on those remaining issues.

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Consistent with its earlier Comment in this proceeding,¹ as well as with numerous other commenting parties, AMTA again respectfully submits that the marketplace, rather than federally-dictated provisions, will best ensure that CMRS subscribers are offered a broad variety of cost-efficient service options from multiple providers, making a blanket resale obligation unnecessary. In the alternative, the Association recommends that the SMR service, now operating on the 800 MHz, 900 MHz and 220-222 MHz frequency bands, should be exempt from any mandatory resale obligation imposed by the Commission on broadband CMRS services.

In its earlier comments and reply comments, AMTA outlined the significant economic and technical problems that a resale obligation would present to the SMR service. These problems remain; the Association will not discuss them further at this time. Instead, the Association wishes to call the Bureau's and the Commission's attention to the transitional status of the SMR industry and the regulations governing it. At the least, the uncertainty regarding the future nature of this service, even the likely entities to be engaged in it over the coming years, makes a mandatory resale obligation premature.

A. The SMR Industry Is Undergoing Large-Scale Transition.

As the Commission is aware, the recent history of the SMR industry is one of tremendous change and wide disparity in business size and function. The business changes now occurring may have a variety of outcomes over the next several years, from a continued patchwork of large and small operations and service offerings to a more cohesive service looking much more similar to today's cellular service. However, it is impossible at this time to determine precisely how SMR will evolve in the coming years.

For much of the industry's two-decade history, very small businesses, often family-owned, used their licensed SMR channels to provide commercial dispatch service to other small businesses in local areas. Communications traditionally were limited to short messages between the mobile units in the field and the customer's central dispatcher.

However, more recently, there has been substantial consolidation of the 800 MHz band by entities intending to create regional or nationwide communications

¹ *Second Notice of Proposed Rulemaking*, CC Docket No 94-54, FCC 95-149 (released April 20, 1995) ("Notice" or "NPR"). Comments were due to the Commission on June 14, 1995; reply comments on July 14, 1995.

networks, employing digital technology to provide a wide variety of new services. While this development holds promise for the expansion of enhanced SMR services to new customer groups, it is premature to predict the final configuration or marketing scope of those systems. Some of those decisions are still in progress; all will necessarily be affected by other marketplace developments, including the rapid deployment of PCS systems.

Currently, only a small percentage of SMR service falls within the CMRS umbrella as defined in Section 332 of the Communications Act. While all SMR service is commercial and available to a significant portion of the general public, of the approximately 2 million units in service at the end of 1995, only 449,000, or 22%, are capable of interconnection to the public switched telephone network (PSTN).² Most operators still offer a mixture of private mobile radio (PMRS) and CMRS services. The percentage of interconnection has remained fairly steady over recent years, and has generally been higher in rural areas, where spectrum is less congested and the longer airtime use associated with interconnected calls does not burden capacity. However, the percentage of interconnected service is expected to increase as digital systems are implemented.³

Whether discussing the 800 MHz, 900 MHz or 220 MHz bands, the SMR marketplace is one of significant change. System construction is going on or about to begin in all three bands; however, bandwidth, technology and service offerings vary widely. AMTA submits that the imposition of a mandatory resale obligation would be both premature and of little benefit to potential resellers given the current state of the industry.

B. SMR Rules and Spectrum are Not Yet Comparable to Those of Other Broadband CMRS Services.

Since telecommunications provisions in the Omnibus Budget Act of 1993 created the CMRS designation, the SMR industry has known that at least part of it will be reclassified as CMRS on August 10, 1996. However, there is still great uncertainty as to what such a classification will entail. Nearly a year after comments were filed in this proceeding, and with only a few months remaining before the end of the statutory transition period, the industry still does not have a regulatory framework comparable to those adopted for other broadband CMRS services. This

² The State of SMR & Digital Mobile Radio 1996, AMTA/MTA-EMCI, 1996, at 176.

³ *Id.*

regulatory uncertainty also makes a mandatory resale obligation premature for this service.

Much of the SMR industry is still licensed on a site-specific basis, with significant restrictions on the extent of modifications that can be made to existing systems, including a licensing freeze on SMR channels that is now approaching its second anniversary. While proceedings are underway that will move the industry to geographic-based licensing,⁴ the new rules will be just the first step. Various portions of SMR frequency bands are likely to be subject to auction; the actual licensees and the extent of their holdings will not be known until after those auctions are completed.

Moreover, the SMR bands are unique among CMRS services in that a large portion of available channels will remain in the hands of small business incumbents, who may continue to provide services widely different from those offered by new licensees in the same geographic area. The presence of incumbents will reduce significantly the amount of spectrum available for wide-area systems in many places. At the same time, other incumbents will be migrating from their current frequencies to different channels within the SMR band. The result is a likely hodgepodge of technologies, services and system sizes for the foreseeable future.

The SMR industry, further, starts with less spectrum than other broadband CMRS. SMR has been allocated a total of 430 25 kHz channel pairs in the 800 MHz band (a total of 21.5 MHz), with a large non-SMR presence across much of the band.⁵ The 900 MHz band consists of a total of 10 MHz; the 220 MHz allocation totals 2 MHz. All of these bands are divided among many competing businesses in each geographic area. The SMR industry has never had a comparable spectrum allocation to cellular or PCS, where a minimum of 10 MHz of contiguous spectrum is held by a single licensee. Even under the recently-issued *First Report and Order* establishing rules for geographic-area licensing of the top 200 SMR channels, a single licensee would have to win all three channel blocks and relocate all incumbents to obtain exclusive use of 10 MHz of contiguous spectrum within a defined geographic

⁴ See, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, FCC 95-501 released December 15, 1995; *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, PR Docket No. 89-552, FCC 95-312, released August 28, 1995.

⁵ Eighty of the channel pairs are interleaved with allocations to other services, making creation of contiguous channel blocks impossible.

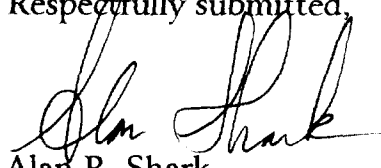
market.

All of these factors combine to make imposition of a mandatory resale obligation undesirable for this service and inconsistent with the public interest. Unlike the history of other broadband services, there is no concentration of spectrum in the hands of one or two licensees in each geographic area. There are also no large amounts of unused spectrum; indeed, past licensing of additional SMR frequencies was linked to a showing of need based on full loading of already-licensed channels. Voluntary resale agreements involving small amounts of capacity have long been the practice in this industry; a mandatory resale obligation would provide little benefit to potential resellers seeking large amounts of spectrum with which to build services and develop customer bases. It could, however, hamstring the operation of SMR providers attempting to manage major regulatory, business and spectrum access transitions.

For the reasons outlined, AMTA again urges the Commission to exempt the SMR service from any mandatory resale obligation contemplated for broadband CMRS.

Thank you for your consideration. If there are any questions concerning this matter, please do not hesitate to contact Liz Sachs at 857-3500, or Jill Lyon or me at 331-7773.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan Shark", written over a horizontal line.

Alan R. Shark
President & CEO

cc: Michele Farquhar, Chief
Karen Brinkmann, Associate Bureau Chief
Michael Wack, Deputy Chief, Policy Div.
Jeff Steinberg, Esq.